

State and Local Homeland Security: Unresolved Issues for the 109th Congress

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Summary

Arguably, the three most important homeland security public laws enacted following the terrorist attacks on September 2001 are: P.L. 107-56, “Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act)”;

P.L. 107-296, “Homeland Security Act of 2002”; and P.L. 108-458, “Intelligence Reform and Terrorism Prevention Act of 2004.” The PATRIOT Act focused on enhancing domestic security through anti-terrorism measures, specifically, law enforcement and legal responses to terrorism. The Homeland Security Act established the Department of Homeland Security (DHS), and the Intelligence Reform and Terrorism Prevention Act restructured the U.S. intelligence community to better assist in terrorism preparedness and response.

These key laws notwithstanding, a host of important state and local homeland security policy issues remain, which the 109th Congress might address. Some of the issues include reportedly unmet emergency responder needs, the proposed reduction in appropriations for federal homeland security assistance, the determination of state and local homeland security risk assessment factors, the absence of emergency responder equipment standards, the development of state and local homeland security strategies, and the limited number of state and local officials with security clearances.

A case could be made that the primary state and local homeland security issue is the reportedly unfair and inadequate distribution of federal homeland security assistance; this report, however, does not address that issue. For information concerning FY2005 homeland security grant allocations and a discussion of federal homeland security assistance distribution formulas, see CRS Report RL32696, *Fiscal Year 2005 Homeland Security Grant Program: State Allocations and Issues for Congressional Oversight*, by Shawn Reese. For a comparison of current legislative actions on homeland security distribution formulas, see CRS Report (archived) RL32892, *Homeland Security Grant Formulas: A Comparison of Formula Provisions in S. 21 and H.R. 1544, 109th Congress*, available to congressional clients upon request from the author.

The report will be updated as congressional actions warrant.

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Introduction

Arguably, the three most important homeland security public laws enacted following the terrorist attacks on September 2001 are: P.L. 107-56, “Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act)”;¹ P.L. 107-296, “Homeland Security Act of 2002”;² and P.L. 108-458, “Intelligence Reform and Terrorism Prevention Act of 2004.”³ The PATRIOT Act focused on enhancing domestic security through anti-terrorism measures, specifically, law enforcement and legal responses to terrorism. The Homeland Security Act established the Department of Homeland Security (DHS), and the Intelligence Reform and Terrorism Prevention Act restructured the U.S. intelligence community to better assist in terrorism preparedness and response.

Numerous other recently enacted public laws address homeland security issues such as the following:

- transportation security;¹
- border security;²
- bioterrorism;³
- maritime security;⁴ and
- terrorism insurance.⁵

These key laws notwithstanding, a host of important state and local homeland security policy issues remain, which the 109th Congress might address. Some of the issues include reportedly unmet emergency responder needs; the proposed reduction in appropriations for federal homeland security assistance; the determination of state and local homeland security risk assessment factors; the absence of emergency responder equipment standards; the development of state and local homeland security strategies; and the limited number of state and local officials with security clearances.

The state and local homeland security issues may be deemed important because they arguably identify critical homeland security needs and policy questions that have not been fully addressed since September 2001.

One could argue that the primary state and local homeland security issue is the widely reported unfair and inadequate distribution of federal homeland security assistance; this report, however, does not address that issue. For information concerning FY2006 homeland security grant allocations, a discussion of federal homeland security assistance distribution formulas, risk factors, and state and urban area homeland security strategies see CRS Report RL33583, *Homeland Security Grants: FY2003 -FY2006 Evolution of Program Guidance and Grant Allocation Methods*, by Shawn Reese.

¹ P.L. 107-71, “Aviation and Transportation Security Act.”

² P.L. 107-173, “Enhanced Border Security and Visa Entry Reform Act, 2002.”

³ P.L. 107-188, “Public Health Security and Bioterrorism Preparedness and Response Act, 2002.”

⁴ P.L. 107-295, “Maritime Transportation Antiterrorism Act, 2002.”

⁵ P.L. 107-297, “Terrorism Risk Insurance Act, 2002.”

Emergency Responder Needs

The FY2006 Homeland Security Grant Program (HSGP) guidelines, which include guidance for the State Homeland Security Grant Program (SHSGP), the Urban Area Security Initiative (UASI), the Law Enforcement Terrorism Prevention Program (LETPP), the Emergency Management Performance Grant Program (EMPG), and the Citizen Corps Programs (CCP), provide a list of authorized equipment, training courses, exercises, and planning activities that states and localities can purchase with grant allocations.⁶ Observers note, however, that the list of authorized expenditures does *not* adequately address the two most important (according to emergency responders) needs—hiring and retention of personnel, and interoperable communications.

Hiring and Retention of Personnel

Hiring and retention of emergency responder personnel (including law enforcement personnel, fire and emergency medical service personnel, and emergency managers) is not an authorized HSGP expenditure. State and local law enforcement agencies receive federal hiring and retention funding, however, through the Department of Justice (DOJ) Community-Oriented Policing Services (COPS) and Justice Assistance Grant Program (JAG).⁷ Fire departments receive hiring and retention funding through the Staffing for Adequate Fire and Emergency Response Grant Program (SAFER).⁸

State and local government officials and emergency responders have stated that the hiring and retention of personnel is one of their principal homeland security needs. Ten months after the September 11, 2001, terrorist attacks, Alexander Knopp, Mayor of Norwalk, Connecticut, testified before the House Committee on Government Reform's Subcommittee on National Security, Emerging Threats, and International Relations. Mayor Knopp stated that federal funding was needed to expand the number of firefighters and police officers to assist in terrorism preparedness and response.⁹ At the same hearing, Christopher J. Lynch, New Cannan, Connecticut, chief of police, stated that emergency responder agencies needed to increase volunteer staff due to the lack of funding for hiring new personnel.¹⁰ In January 2005, 50 House of Representatives Members sent a bipartisan letter to the President asking for a significant increase in the Administration's FY2006 budget for the hiring of first responders.¹¹

On May 1, 2003, former DHS Secretary Tom Ridge testified before the Senate Governmental Affairs Committee that it was not the federal government's role to pay the salaries of state and local employees.¹² Even with the testimony of state and local officials, DHS continues to prohibit

⁶ U.S. Department of Homeland Security, Office for Grant and Training, *Fiscal Year 2006 Homeland Security Grant Program: Program Guidelines and Application Kit* (Washington: Dec. 2005).

⁷ In FY2005, DOJ combined the Local Law Enforcement Block Grant Program and the Byrne Memorial Grant Program into JAG.

⁸ In FY2005, Congress appropriated \$65 million for SAFER in P.L. 108-334 (FY2005 DHS appropriations).

⁹ U.S. Congress, House Committee on Government Reform, Subcommittee on National Security, Emerging Threats, and International Relations, *Homeland Security: Keeping First Responders First*, 107th Cong., 2nd sess., hearing, July 30, 2002 (Washington: GPO, 2003), p. 31.

¹⁰ *Ibid.*, p. 48.

¹¹ "Representative Abercrombe Requests First Responders Grants Restored to Police, Firefighters," *U.S. Federal News*, Feb. 28, 2005. See also, "Representative Tierney Spearheads Efforts for First Responder Funding in Fiscal 2006 Budget," *U.S. Federal News*, Jan. 12, 2005.

¹² U.S. Congress, Senate Governmental Affairs Committee, *Investing in Homeland Security: Streamlining and Enhancing Homeland Security Grant Programs*, 108th Cong., 1st sess., hearing, May 1, 2003, (Washington: GPO,

the use of federal homeland security funding for the hiring and retention of emergency responder personnel.

With the increased role state and local personnel have in homeland security activities, Congress might consider authorizing the use of federal homeland security assistance funding for hiring and retaining emergency responders. One might argue that without a sufficient number of emergency responder personnel, states and localities might have difficulties performing day-to-day operations and responding to homeland security emergencies.

On the same subject, in February 2005, the Administration proposed in its FY2006 budget request to reduce funding for COPS and eliminate JAG.¹³ On February 7, 2005, the International Association of Chiefs of Police (IACP) released a press statement announcing its displeasure with the Administration's proposal.¹⁴ The proposed cut in COPS funding and the elimination of JAG could further reduce state and local homeland security capabilities by reducing the amount of federal funding used to hire and retain emergency responders.

One bill in the 109th Congress, passed by the House on May 12, 2005, H.R. 1544, "Faster and Smarter Funding for First Responders Act of 2005," and another bill, reported on April 12, 2005, by the Senate Homeland Security and Governmental Affairs Committee, S. 21, "Homeland Security Enhancement Act of 2005," propose to provide funding for overtime expenses related to homeland security activities. Neither bill, however, authorizes federal homeland security funding to be used for the hiring and retention of emergency responders.

Interoperable Communications

According to a National Governors Association (NGA) survey conducted in August 2004, only 22% of the states that responded have developed statewide interoperability communications, while 73% of those that responded stated they are still in the process of developing interoperability.¹⁵ On June 15, 2003, IACP released a list of anti-terror needs, and stated that one of their priorities is interoperable communications among all emergency responder entities.¹⁶

The FY2006 HSGP guidelines authorize states and localities to purchase communications equipment.¹⁷ Interoperable communications equipment, however, is but one of many types of equipment on the DHS Authorized Equipment List (AEL). Even with this funding source, NGA states:

Developing statewide interoperability for emergency responders is the chief priority, and states are working diligently to bolster this capacity. Many are struggling with the dual challenges of funding and time. States must either replace outdated equipment with new

2003).

¹³ U.S. Office of Management and Budget, *Fiscal Year 2006 Budget of the United States Government* (Washington: GPO, 2005), Appendix, p. 708.

¹⁴ International Association of Police Chiefs, "Police Chiefs Decry Deep Budget Cuts That Would Make Communities More Vulnerable," press release, Feb. 7, 2005.

¹⁵ National Governors Association, "Homeland Security in the States: Much Progress, More Work," issue brief, Jan. 24, 2005.

¹⁶ International Association of Police Chiefs, "Police Chiefs Offer Priority List of Anti-Terror Needs," press release, June 15, 2003.

¹⁷ *Fiscal Year 2006 Homeland Security Grant Program: Program Guidelines and Application Kit* (Washington: Dec. 2005).

models, or install software that allows incompatible equipment throughout the state to communicate with each other.¹⁸

Additionally, NGA stated that the survey respondents indicated that additional grant funding would facilitate the acquisition of new technology to enable interoperability.¹⁹

One might assume that because DHS has not provided a separate funding source or a specific amount of grant funding for communications equipment, the department does not recognize the state and local need for interoperable communications. This assumption, however, does not address the issue of state and local governments' responsibility for prioritizing their homeland security needs.

The House Appropriations Committee recommended, in H.R. 2360 (FY2006 DHS appropriations), a total of \$3.19 billion for federal homeland security assistance, a reduction of \$420 million from FY2005 funding (see **Table 1**). This proposed reduction included \$350 million less for SHSGP than was appropriated in FY2005.²⁰ SHSGP is the primary program states use to fund interoperable communications. The ability of emergency responders to communicate has been identified as one of the primary national priorities in the *National Preparedness Goal*.²¹ The proposed reduction in funding could result in states and localities not funding interoperable communications at the level needed to meet the national priority of strengthening this capability.

Reduction in Federal Homeland Security Assistance

The reduction of federal homeland security assistance funding is another homeland security issue states and localities face. In FY2005, Congress appropriated approximately \$3.61 billion for state and local homeland security assistance.²² In the FY2006 budget request, the Administration proposes a total of \$3.36 billion for federal homeland security assistance, a reduction of \$250 million from FY2005 funding. Additionally, the FY2006 budget request provides no line item funding for the Law Enforcement Terrorism Prevention Program (LETPP). It proposes, however, to direct states and localities to allocate no less than 20% of SHSGP and UASI funding for LETPP activities.²³ Apparently, this would be a reduction in SHSGP and UASI funding for equipment, training, exercises, and planning, which states and localities were authorized to fund with 100% of their allocated amount in FY2005. One could argue that the proposed overall funding reduction of \$250 million and the Administration's requirement for states and localities to allocate no less than 20% of their SHSGP and UASI funding to LETPP activities would represent a further reduction of funding for state and local homeland security activities.

The Administration's budget proposal requests \$500 million for FIRE in FY2006, a cut of 30% from the FY2005 appropriated level. Priority would be given to grant applications enhancing counter-terrorism capabilities. Grants would be available only for training, vehicle acquisition, firefighting equipment, and personal protective equipment. Under the budget proposal, activities such as wellness/fitness and fire station modification would not be funded. Activities such as

¹⁸ "Homeland Security in the States: Much Progress, More Work," issue brief, Jan. 24, 2005, p. 5.

¹⁹ *Ibid.*, p. 4.

²⁰ House Appropriations Committee Homeland Security tables of Mar. 15, 2005, accompanying H.R. 2360.

²¹ U.S. Department of Homeland Security, *Interim National Preparedness Goal* (Washington: Mar. 2005), p. 13. For further information on the National Preparedness Goal, see CRS Report RL32803, *The National Preparedness System: Issues in the 109th Congress*, by Keith Bea.

²² P.L. 108-334, Title III, FY2005 DHS appropriations.

²³ *Fiscal Year 2006 Budget of the United States Government* (Washington: GPO, 2005), Appendix, p. 478.

prevention, public fire safety education and awareness, and fire code enforcement would be funded under a separate fire prevention and firefighter safety grant program. For FY2006, the Administration is requesting no funding of the Staffing for Adequate Fire and Emergency Response (SAFER) grants, which provide assistance to fire departments for hiring personnel.²⁴ The House Appropriations Committee recommends \$600 million for firefighter assistance, including \$550 million for fire grants and \$50 million for SAFER Act grants. The committee does not agree with the Administration's proposal to shift the program's priority to terrorism or to limit the list of eligible activities. The following table compares funding for FY2003 through FY2005 with the FY2006 budget request and DHS appropriations bill (H.R. 2360). The House Appropriations Committee recommends a total of \$3.19 billion for federal homeland security assistance, a reduction of \$420 million from FY2005 funding.²⁵

Table 1. FY2005-FY2006 Federal Homeland Security Assistance

(Amounts in millions of dollars)

Program	FY2003 Approps	FY2004 Approps	FY2005 Approps	FY2006 Budget Request	FY2006 House (H.R. 2360)
State Homeland Security Grant Program	1,870	1,700	1,100	1,020	750
Urban Area Security Initiative	800	725	1,200	1,020	1,215
Targeted Infrastructure Protection	—	—	—	600	—
Law Enforcement Terrorism Prevention Program	—	400	400	[408] ^a	400
Critical Infrastructure Protection	200	—	—	—	—
Assistance to Firefighters	750	750	715	500	600
Emergency Management Performance Grants	170	180	180	170	180
Citizen Corps Programs	30	40	15	50	40
Total	3,820	3,795	3,610	3,360	3,185

Source: P.L. 107-117; P.L. 107-206; P.L. 108-7; P.L. 108-11; P.L. 108-90; P.L. 108-334; OMB, FY2006 Budget, Appendix, p. 478; and House Appropriation Committee tables of Mar. 15, 2005 accompanying H.R. 2360.

a. This amount is not included in the total and is derived from the 20% of SHSGP and UASI to be used for law enforcement terrorism prevention activities.

²⁴ This information provided by Len Kruger, Specialist in Science and Technology, Research, Science, and Industry Division, Congressional Research Service.

²⁵ House Appropriations Committee Homeland Security tables of Mar. 15, 2005 accompanying H.R. 2360.

Initially, following the September 2001 terrorist attacks, there may have been a need for a significant amount of funding for state and local homeland security. Some may argue, however, that now there is only a need to maintain state and local homeland security programs and activities. Nevertheless, some may argue that the initial attempt to create a base amount of homeland security funding may have been inadequate. As an example, states have identified a need for additional funding for interoperable communications systems. Additionally, the reduction of funding may impair state and local attempts to meet the *National Preparedness Goal*'s national priorities of implementing the National Incident Management System (NIMS) and National Response Plan (NRP); expanding regional homeland security collaboration; implementing the Interim National Infrastructure Protection Plan; strengthening homeland security information sharing and collaboration capabilities; strengthening chemical, biological, radiological, nuclear, and explosive (CBRNE) detection, response, and decontamination capabilities; and strengthening medical surge and mass prophylaxis capabilities.²⁶

Homeland Security Equipment Standards

Another state and local homeland security issue concerns equipment standards. On December 17, 2003, the President issued Homeland Security Presidential Directive-8 (HSPD-8). Among other things, HSPD-8 directs the DHS Secretary, in coordination with state and local officials, to establish and implement procedures for developing and adopting first responder equipment standards that support a national preparedness capability.²⁷ DHS, however, has so far issued standards only for two first responder equipment categories: personal protective gear, and radiation and nuclear detection equipment.²⁸

Presently, DHS has not provided standards for any other type of first responder equipment. A report prepared for the Oklahoma City National Memorial Institute for the Prevention of Terrorism and the Department of Justice recommends that the federal government establish first responder equipment standards to assist in the nation's preparedness for terrorist attacks.²⁹ In February 2003, The National Task Force on Interoperability, a task force composed of representatives from professional emergency responder and government personnel associations, recommended the establishment of standards for interoperable communications. In a report on interoperable communications, the task force stated that the use of standards for equipment and software might alleviate many of the interoperability problems faced by emergency responders, and state and local governments.³⁰

In the FY2006 HSGP guidance, DHS provides an AEL that categorizes which equipment states and localities are authorized to purchase. The list, however, does not identify standards for

²⁶ *Interim National Preparedness Goal* (Washington: Mar. 2005), pp. 9-15.

²⁷ U.S. President, Office of Homeland Security, "Homeland Security Presidential Directive-8: National Preparedness," Homeland Security Presidential Directive, Dec. 17, 2003, available at <http://www.whitehouse.gov/news/releases/2003/12/20031217-6.html>, visited June 7, 2005.

²⁸ U.S. Department of Homeland Security, Office for Domestic Preparedness, "Emergency and Disasters: First Responder Standards," available at <http://www.dhs.gov/dhspublic/display?theme=63&content=3294>, visited May 25, 2005.

²⁹ Hicks and Associates, Inc., *Project Responder: Emergency Responders Needs, Goals, and Priorities*, Mar. 1, 2003, p. 12, available only to <http://www.llis.dhs.gov> members at http://www.llis.dhs.gov/member/secure/detail.cfm?content_id=6541, visited May 25, 2005.

³⁰ The National Task Force on Interoperability, *Why Can't We Talk?: Working Together to Bridge the Communications Gap to Save Lives*, Feb. 1, 2003, p. 54, available only to <http://www.llis.dhs.gov> members at <http://llis.dhs.gov/members/secure/detail.cfm?content=6591>, visited May 25, 2005.

equipment selection.³¹ H.R. 1544 and S. 21 either require a determination of the need for equipment standards or require DHS to provide information to states and localities on voluntary standards.

The lack of equipment standards may result in states and localities purchasing equipment which does not meet their homeland security needs. It may also result in states and localities purchasing equipment that is not compatible with other jurisdictions' equipment. The need for multiple jurisdictions to use the same equipment or compatible equipment might become evident if multiple jurisdictions were to respond jointly to a homeland security emergency.

State and Local Official Security Clearances³²

Most information DHS provides to state and local government officials is unclassified.³³ Nevertheless, these officials might need some access to classified information, for example, "real time" intelligence information concerning terrorism threats, to adequately plan, coordinate, and execute homeland security activities.

Presently, about 325 state and local government officials possess DHS-sponsored security clearances, and 250 state and local government officials are in the process of receiving DHS-sponsored security clearances. DHS continues to process additional clearances for state, local, territorial, and tribal officials whose requests are submitted through their states' Office of Homeland Security. One mayor from New York State has a DHS-sponsored security clearance, and the State of Hawaii has recently submitted clearance requests for four mayors. DHS states that no other mayors have requested DHS-sponsored security clearances. Every Governor, however, is granted a security clearance after signing a non-disclosure agreement (Special Form-312).³⁴

In addition to DHS, several other federal departments and agencies provide security clearances to state and local officials. The Federal Bureau of Investigation (FBI) provides numerous state and local law enforcement officials with security clearances. State and local officials may also possess security clearances provided by the Department of Defense, as a result of military (Reserves and National Guard) service.

While hundreds of state and local officials have federally sponsored security clearances, DHS is unable to provide an accurate number of them.³⁵ This limited and uncertain number of state and local officials with security clearances might affect the ability of DHS (or other federal departments and agencies) to provide classified information to states and localities. They, in turn, might not be able to adequately prepare for, respond to, and recover from terrorist attacks without access to classified information. Additionally, states and localities might not be able to coordinate

³¹ *Fiscal Year 2006 Homeland Security Grant Program: Program Guidelines and Application Kit* (Washington: Dec. 2005).

³² For further information on state and local officials' security clearances, congressional clients may contact Fred Kaiser, Specialist in American National Government, Government and Finance Division, Congressional Research Service.

³³ Letter from Michael Cappannari, Legislative Assistant, Office of Legislative Affairs, U.S. Department of Homeland Security, to Fred Kaiser, Specialist in American National Government, Government and Finance Division, Congressional Research Service, June 3, 2005.

³⁴ *Ibid.*

³⁵ *Ibid.*

with other government entities (federal or state and local) if information cannot be shared due to a lack of security clearances.

Security clearances are a problem not only for state and local officials, but also, according to the Government Accountability Office (GAO), for port security officials. GAO reported in April 2005 that port security officials are having difficulties getting homeland security information due to delays in obtaining security clearances. Delays, as determined by GAO, have occurred because U.S. Coast Guard field representatives did not know that the Coast Guard was responsible for contacting non-federal port security officials concerning security clearances, and Coast Guard field offices were not tracking submitted port security officials' security clearance requests.³⁶

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³⁶ U.S. Government Accountability Office, *Maritime Security: New Structures Have Improved Information Sharing, but Security Clearance Processing Needs Further Attention*, GAO-05-394, Apr. 2005, p. 27, available at <http://www.gao.gov>, visited June 7, 2005.